



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 10, 1998

Mr. Donald R. Postell
City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR98-2660

Dear Mr. Postell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119451.

The City of Grand Prairie (the "city") received a request for various information. You state that some of the requested information will be released. You assert that other requested items are records of the judiciary and are not subject to the Open Records Act. You contend that the remaining information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered your arguments and have reviewed the submitted documents.

As a threshold issue, we note that the Open Records Act does not apply to records of the judiciary. Gov't Code § 552.003(B). The requestor seeks various municipal court citations. In this instance, we are unable to determine whether the requested citations are records held by the judiciary or whether they are records filed with the municipal court and also maintained by another governmental body. You do not indicate whether you seek a decision on behalf of the municipal court or city. If the requested records are genuinely records maintained solely by the municipal court, you need not release them under the Open Records Act. Attorney General Opinion DM-166 (1992). As records of the judiciary, however, the information may be public by other sources of law. Attorney General Opinions DM-166 at 2-3 1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); *see Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released). Additionally, the records may be subject to disclosure under statutory law governing municipal courts. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order).

If, on the other hand, the citations are maintained by a governmental body other than the municipal court, such as another city department or law enforcement agency, and were merely filed with the court, then they are public documents under the Open Records Act and are subject to disclosure. You have not claimed any additional exceptions to disclosure for citations requested in items 2, 10, 11, and 12 of the request. Therefore, if these citations are not maintained solely by the municipal court, the records must be released to the requestor.

Section 552.103(a) of the Government Code excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To show that section 552.103(a) is applicable, the city must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

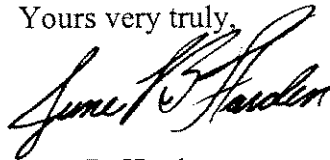
You explain that the city has been investigating criminal activities and safety conditions at the local flea market. You also state that "[j]ust prior to preparation and filing of a Petition seeking injunctive relief including possible closure of the business operation," the city received this request for information. Based on your assertions that the city is in the process of filing a lawsuit against the flea market, we find that the city has met the first prong of the section 552.103(a) test. *But see* Open Records Decision No. 557 (1990) (mere contemplation of bringing civil action when governmental body has not yet done so does not satisfy reasonably anticipated litigation prong of section 552.103). We also conclude that the information you have submitted is related to the anticipated litigation and may be withheld.¹

¹We note, however, that basic information in an offense report generally may not be withheld under section 552.103. Open Records Decision No. 362 (1983).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 119451

Enclosures: Submitted documents

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(w/o enclosures)